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SENATE

{ REPORT
No. 91-955

ARLINE AND MAURICE LOADER

JUNE 24, 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 2514]

The Committee on the Judiciary, to which was referred the bill (S. 2514) for the relief of Arline and Maurice Loader, having considered the same, reports favorably thereon, with an amendment and recommends that the bill as amended do pass.

AMENDMENT

On page 2 in line 4, strike "20 per centum" and insert in lieu thereof "10 per centum".

PURPOSE OF THE AMENDMENT

The purpose of the amendment is to limit any lawyer's fee to 10 percent of the claim.

PURPOSE

The purpose of the bill, as amended, is to pay to Arline and Maurice Loader, of Yachats, Oreg., \$20,000 for the death of their sons, Maurice G. Loader and Fredric M. Loader, on October 15, 1944, as the result of the explosion of a 37-millimeter, armor-piercing shell found by the children on a firing range.

STATEMENT

A similar bill for these claimants in the 90th Congress, H.R. 1971, was passed by the House of Representatives but no action was taken in the Senate. In its favorable report on the bill, the Committee on the Judiciary of the House of Representatives said:

The bill, H.R. 2016, was the subject of a subcommittee hearing on May 5, 1966. The testimony at that hearing and material submitted to the committee in support of the claim indicates that on the afternoon of October 15, 1944, four children, Maurice G. Loader, Jr., age 14; Fredric M. Loader, 13; Eleanor Loader, age 5; and Clifford Harp, age 14, were playing in the Loader's garage located in Montara, Calif., a small coastal town approximately 20 miles south of San Francisco. The children were repairing a toy wagon and took from a tool box a 37-millimeter, armor-piercing shell which had apparently been found by a playmate of the oldest Loader child and brought into the Loader's garage unknown to the parents, Maurice and Arline Loader. The shell exploded, killing Maurice G. Loader, Jr., and Fredric M. and injuring the other two children. The information available to the committee indicates that the shell had been found on the Montara firing range, which had been used by the U.S. Army for anti-invasion maneuvers during World War II. The firing range, although encircled by a three-strand wire fence, was not adequately guarded notwithstanding that, previous to the tragedy, unexploded shells and grenades had been found on the range by children residing in Montara.

As is noted in the Army Department report, a newspaper account of the tragedy outlines with considerable detail the facts of the explosion. That report also notes that the Army recognized the responsibility of the Government by paying \$711 for funeral expenses relating to the two children killed in the blast.

The Army has referred to the fact that the Congress has on a number of occasions passed bills granting similar compassionate relief to the parents of children killed or injured in similar accidents. Notwithstanding the outline of the facts in the Army report, that Department states that it did not have the information necessary to confirm or deny the facts of the case. The committee must disagree with this conclusion. The fact that the deaths resulted from an explosion of military ordnance is not controverted in any way. The records of the Army confirm that the Army recognized the claim to the extent then possible under the law by authorizing a payment of the funeral expenses for the dead children. In this connection, it is also clear that a release secured by the Army at that time was a prerequisite to payment of the only amount available and cannot now be taken as a reason for a denial of compassionate relief by legislative action. It cannot be denied that there has been a long delay in presenting and recognizing this claim but this does not lessen the loss to the parents.

Under these circumstances and in the light of the fact that Congress has granted relief previously in similar cases, the committee recommends that the bill be considered favorably.

The committee believes that the bill is meritorious and recommends it favorably.

Attached and made a part of this report is a letter, dated June 29, 1965, from the Department of the Army.

DEPARTMENT OF THE ARMY,
Washington, D.C., June 29, 1965.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H.R. 2016, 89th Congress, a bill for the relief of Arline and Maurice Loader.

This bill provides that the Secretary of the Treasury is authorized and directed to pay out of any money in the Treasury not otherwise appropriated, the sum of \$20,000 to Arline and Maurice Loader of Half Moon Bay, Calif., in full settlement of their claim against the United States based upon the deaths of their sons, Maurice G. Loader and Frederic M. Loader, on October 15, 1944, as the result of the explosion of a 37-millimeter, armor-piercing shell found by children on the Montara firing range.

The Department of the Army opposes the bill.

The attorney representing the Loaders prepared a statement which was made available to the Department of the Army. This statement disclosed that on October 15, 1944, Maurice G. Loader, age 14; Frederic M. Loader, age 13; Eleanor Loader, age 5; and Clifford Harp, age 14; were playing in the Loader's garage located in Montara, Calif., a small coastal town approximately 20 miles south of San Francisco. The children were repairing a toy wagon and took from a tool box a 37-millimeter, armor-piercing shell which exploded killing Maurice G. Loader, Jr., and Frederic M. Loader and injuring the other two children. The statement includes a newspaper account from the San Mateo Times describing the accident as follows:

"GRENADE BLAST KILLS TWO BOYS AT MOSS BEACH

"TWO INJURED WHEN MISSILE FOUND IN FIELD GOES OFF IN SHED

"MONTARA, October 16.—A deadly hand grenade that children brought to their home as a 'souvenir' yesterday brought tragedy into a quiet Sunday afternoon, killing two boys and sending another boy and a small girl to hospitals with injuries that may prove fatal.

"The dead were Maurice Grant Loader, 14, and his brother, Frederick [sic] Milton Loader, 12, the sons of Frederick Loader, Sr., war-worker and operator of a nursery in Denniston Canyon, 2 miles north-east of Moss Beach.

"Injured were two other children, Elenor [sic] Loader, the 5-year-old sister of the two dead boys, and Clifford Harp, 14, the son of Bert Harp, school district trustee, and Mrs. Willie Harp, Montara postmistress.

"The little girl suffered severe lacerations of the head and leg and shock. The boy has a badly mangled right arm, lacerations of the neck, and shrapnel wounds in the back. At Community Hospital today his condition was called serious while the little girl's condition was fair.

"The four children were playing together at the Loader garage at 3:30 p.m. when the sudden blast of the 'souvenir' handgrenade brought Loader and his wife, Arline, panic stricken to where the children had been gathered around a toolbox attempting to repair a broken toy wagon.

"Frederick Loader, Jr., had been bending over the toolbox in which the grenade had apparently been placed and the other three children were close by. His body was badly mangled by the blast.

"The deadly missile was in the box without the knowledge of the children's father and mother and was said by Loader to have been found by one of the boys several days ago on the nearby military reservation and firing range where Army troops and tank detachments are frequently engaged in battle training with live ammunition. It was believed that the handgrenade, a weapon of the Mills bomb type, was probably a 'dud' left behind by one of the Army groups.

"It was said today that the children frequently found shell fragments and other 'dud' ammunition in the foothills used for firing practice. A neighbor's boy, Joseph Pecorar, 17, was said to have recently found live ammunition of heavy caliber.

"The military reservation and firing range are plainly posted with warning notices, but troops have not been active for some time and the children had resumed playing in the area.

"Navy authorities began an investigation to determine responsibility for the overlooked explosive, and it was expected that the Army also would make an investigation.

"The two children who survived the explosion were immediately rushed by Navy ambulances to the hospital at the Navy's Point Montara Training Station. Later they were removed to Mills Hospital and subsequently to Community. All of the children attended the Montara School.

"Escaping the fatal blast were two other children of the Loader family, Carmin, 8, and Louis, 10 [who] were not with the group bent on repairing the toy wagon.

"The mangled bodies of the two boys were taken to the Dutra Funeral Home in Half Moon Bay, where arrangements are being completed to send them to the Loader family home at Pleasant Grove, Utah. The Loaders have lived here for 13 years, and their address is Moss Beach, Post Office Box 82."

The statement also shows that in "December 1944, Mr. and Mrs. Loader were paid \$711 by the U.S. Government, apparently under the provisions of the Military Claims Act of July 3, 1943, which sum represented the burial expenses incurred by the Loaders for the burial of their two children." Mr. Loader now suffers from a heart condition and is unable to work full time because of his physical condition.

Using leads obtained from the statement, the Department of the Army has conducted an exhaustive and fruitless search for records concerning the incident. Army investigative and claims files which may have contained pertinent information have been destroyed in the

course of normal records management. The Department of the Navy is also unable to locate any records pertaining to the incident. The community of Montara is unincorporated and there are no city or town records of the incident. As the accident occurred on October 15, 1944, the claim is not cognizable under the Federal Tort Claims Act which became effective on January 1, 1945 (60 Stat. 842 (1946), 28 U.S.C. 1346(b) (1958)). Under existing law at the time of the accident, it appears from the attorney's statement that the Loaders received an appropriate settlement under the Military Claims Act (10 U.S.C. 2733 (1958)) which then limited recovery to reasonable medical, hospital, and burial expenses actually incurred, but not in excess of \$500 in time of peace and \$1,000 in time of war (57 Stat. 372 (1943)). Settlement is final and conclusive for all purposes. Under present law, the Loaders are still barred from receiving any greater sum. Section 17 of Public Law 85-861, September 2, 1958, 72 Stat. 1558, provides that—

“A claim for personal injury or death under section 2733 of title 10, United States Code [i.e., the Military Claims Act], may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, if the claim accrued before March 30, 1956.”

The Department of the Army is cognizant of the compassionate relief granted by the Congress in other instances when children have been killed or seriously injured by dud explosions, including cases occurring before March 30, 1956, but examination of such cases reveals records of sufficient information on which to evaluate the merits of the bill. This incident occurred over 20 years ago, and this Department is now unable to confirm, rebut, or deny the factual allegations. The beneficiaries admit, through their attorney, a final and conclusive settlement in December 1944 in accord with the law then and now, as applied to incidents prior to March 30, 1956. The alleged facts disclose no extraordinary circumstances to explain the delay in reopening the matter to obtain compassionate consideration. To avoid application of the equitable doctrine of laches, an action should be initiated within such time as evidence is available to determine the particular facts with reasonable certainty. Under the circumstances here, the Department of the Army opposes the bill.

The cost of this bill, if enacted, will be \$20,000.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

STEPHEN AILES,
Secretary of the Army.

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